

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	
IN RE FOREIGN EXCHANGE BENCHMARK	:	13 Civ. 7789 (LGS)
RATES ANTITRUST LITIGATION	:	
	:	<u>ORDER</u>
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LORNA G. SCHOFIELD, District Judge:

WHEREAS, on August 19, 2022, the parties filed competing proposed verdict forms and pretrial memoranda in support of their respective positions. The Court subsequently proposed Court Draft 1 of the verdict form and directed the parties to raise any issues and objections, which the parties did.

WHEREAS, CS Defendants’ original proposal is legally unsound for the reasons stated in the Court’s August 25, 2022, Order at Dkt. No. 1842, and CS Defendants’ judicial estoppel argument fails for similar reasons. Regardless of whether Plaintiffs took an inconsistent position earlier in the litigation, as Defendants allege, the Court never “adopted” the position that the conspiracy would or must be proved in its entirety or not at all. *See In re Adelfphia Recovery Tr.*, 634 F.3d 678, 695-96 (2d Cir. 2011) (“[J]udicial estoppel will apply if . . . the party’s former position has been adopted in some way by the court . . .”). That principle is inconsistent with basic principles of antitrust and conspiracy law, as Plaintiffs correctly argue. For similar reasons, the Court rejects the CS Defendants’ “trial by ambush” argument.

WHEREAS, CS Defendants’ Rule 23 arguments are rejected as untimely. The Rule 23 issues have been adjudicated twice already, in the decision to certify the class and the recent decision not to decertify the class.

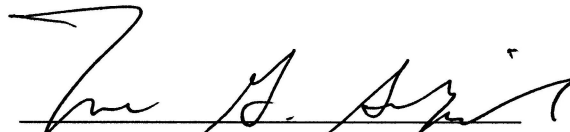
WHEREAS, CS Defendants’ argument that the verdict form should specify individual traders rather than banks -- and Defendants’ Seventh Amendment arguments in general -- are

also unpersuasive, for substantially the reasons stated in the Opinion and Order denying CS Defendants' motion to decertify the class. The banks, including CS, are the defendants who allegedly conspired, albeit through individuals acting as their agents.

WHEREAS, CS Defendants' argument that the first jury should decide whether one conspiracy existed or several is persuasive. That position is reflected in Court Draft 2.

It is hereby **ORDERED** that, having considered the parties' arguments, the Court intends to adopt a verdict form in substantially the form of Court Draft 2, which is attached to this Order.

Dated: September 3, 2022
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	13 Civ. 7789 (LGS)
IN RE FOREIGN EXCHANGE BENCHMARK	:	
RATES ANTITRUST LITIGATION	:	<u>SPECIAL VERDICT</u>
	:	<u>FORM</u>
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We, the jury, unanimously find as follows on the questions submitted to us:

Question 1: Did Plaintiffs prove, by a preponderance of the evidence, the existence of a conspiracy to widen, fix, stabilize or maintain bid-ask spreads in the FX spot market?

Yes

No

If you answered "Yes" to Question 1, please continue to Question 2.

If you answered "No" to Question 1, your deliberations are complete.

Question 2: Did Plaintiffs prove, by a preponderance of the evidence, that Credit Suisse knowingly participated in any conspiracy that you found in response to Question 1?

Yes

No

If you answered "Yes" to Question 2, please continue to Question 3.

If you answered "No" to Question 2, your deliberations are complete.

Question 3: How many conspiracies do you find Plaintiffs have proven, by a preponderance of the evidence, that Credit Suisse knowingly participated in? _____

Please continue to Question 4.

COURT DRAFT 2

Question 4: If you answered “1” for the immediately previous question, or for the first conspiracy you found, please answer the following two questions:

Question 4A: State the period of time that you found that the conspiracy existed: (*Circle or write in the dates*)

December 1, 2007, to
December 12, 2013
(inclusive)

Or

The following lesser period:

Question 4B: Circle every bank below that you found knowingly participated in the conspiracy with Credit Suisse:

Bank of America

Bank of Tokyo-Mitsubishi

Barclays

BNP Paribas

Citigroup

Deutsche Bank

Goldman Sachs

HSBC

JPMorgan

Morgan Stanley

RBC

RBS

Société Générale

Standard Chartered

UBS

If you found only one conspiracy existed in which Credit Suisse knowingly participated (i.e. you answered “1” to Question 3), your deliberations are complete.

If you found that more than one conspiracy existed in which Credit Suisse knowingly participated, please proceed to answer Questions 5A and 5B for each of them.

COURT DRAFT 2

Question 5: For the _____ (e.g. *second*) conspiracy you found in response to Question 3, please answer the following two questions:

Question 5A: State the period of time that you found that the conspiracy existed: (*Circle or write in the dates*)

December 1, 2007, to
December 12, 2013
(inclusive)

Or

The following lesser period:

Question 5A: Circle every bank below that you found knowingly participated in the conspiracy with Credit Suisse:

Bank of America

Bank of Tokyo-Mitsubishi

Barclays

BNP Paribas

Citigroup

Deutsche Bank

Goldman Sachs

HSBC

JPMorgan

Morgan Stanley

RBC

RBS

Société Générale

Standard Chartered

UBS

If you have answered Questions 5A and 5B for every conspiracy that you found in which Credit Suisse knowingly participated, your deliberations are complete.

If you found more than two conspiracies in which Credit Suisse knowingly participated, please write out the answers Questions 5A and 5B for each remaining conspiracy on a new sheet of paper.